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6 UNITED STATES DISTRICT COURT  
7 WESTERN DISTRICT OF WASHINGTON  
8 AT SEATTLE

9 FRANCIS R.,

10 Plaintiff,

11 v.

12 COMMISSIONER OF SOCIAL SECURITY,

13 Defendant.

Case No. C20-850-MLP

ORDER

14 **I. INTRODUCTION**

15 Plaintiff seeks review of the denial of his applications for Supplemental Security Income  
16 and Disability Insurance Benefits. Plaintiff contends the administrative law judge (“ALJ”) erred  
17 in assessing four medical opinions. (Dkt. # 25 at 1.) As discussed below, the Court AFFIRMS  
18 the Commissioner’s final decision and DISMISSES the case with prejudice.

19 **II. BACKGROUND**

20 Plaintiff was born in 1959, has a high school diploma, and previously owned and  
21 operated a property maintenance business. AR at 243. Plaintiff was last gainfully employed in  
22 June 2013. *Id.* at 242. In April 2014, Plaintiff applied for benefits, alleging disability as of June  
23 1, 2013. AR at 214-24. Plaintiff’s applications were denied initially and on reconsideration, and  
Plaintiff requested a hearing. *Id.* at 142-45, 148-53. After the ALJ conducted hearings in

1 September 2015 and January 2016 (*id.* at 33-81), the ALJ issued a decision finding Plaintiff not  
2 disabled. *Id.* at 11-27.

3 The Appeals Council denied Plaintiff's request for review (AR at 2-7), and the U.S.  
4 District Court for the Western District of Washington reversed the ALJ's decision and remanded  
5 for reconsideration of four medical opinions. *Id.* at 848-61. A different ALJ held a hearing in  
6 December 2019 (*id.* at 793-816), and subsequently issued a decision finding Plaintiff not  
7 disabled during the adjudicated period running from June 1, 2013, to July 8, 2016<sup>1</sup> (the day  
8 before he was found disabled via a subsequent application for benefits). *Id.* at 765-84.

9 Utilizing the five-step disability evaluation process,<sup>2</sup> the ALJ found:

10 Step one: Plaintiff has not engaged in substantial gainful activity since his alleged onset  
11 date.

12 Step two: During the adjudicated period, Plaintiff had the following severe impairments:  
13 peripheral neuropathy, obstructive sleep apnea, depressive disorder, anxiety-related  
14 disorder, personality disorder, history of trichotillomania, and substance use disorder.

15 Step three: These impairments do not meet or equal the requirements of a listed  
16 impairment.<sup>3</sup>

17 Residual Functional Capacity: During the adjudicated period, Plaintiff could perform  
18 medium work with additional limitations: he could occasionally climb ramps and stairs,  
19 but could never climb ladders, ropes, or scaffolds. He could not operate foot controls. He  
20 could occasionally balance, stoop, kneel, crouch, and crawl. He could frequently handle  
21 and finger. He would need to avoid concentrated exposure to extreme cold, heat,  
22 excessive vibration, and workplace hazards (such as working with dangerous machinery  
23 and at unprotected heights). He could perform simple, routine tasks, in a routine work  
environment, with simple work-related decisions. He could have occasional superficial  
interaction with co-workers, supervisors, and the public, but could not engage in  
teamwork with co-workers, supervisory/problem-solving responsibility, or processing of  
complaints from the general public.

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<sup>1</sup> Although the ALJ's decision refers to both July 8, 2016, and July 8, 2018, as the date Plaintiff was found disabled, the record confirms that the correct date is in 2016. *See* AR at 882.

<sup>2</sup> 20 C.F.R. §§ 404.1520, 416.920.

<sup>3</sup> 20 C.F.R. Part 404, Subpart P, Appendix 1.

1 Step four: During the adjudicated period, Plaintiff could not perform past relevant work.

2 Step five: As there are jobs that exist in significant numbers in the national economy that  
3 Plaintiff could have performed during the adjudicated period, Plaintiff was not disabled  
during that period.

4 AR at 765-84.

5 Plaintiff appealed the final decision of the Commissioner to this Court. (Dkt. # 4.)

### 6 III. LEGAL STANDARDS

7 Under 42 U.S.C. § 405(g), this Court may set aside the Commissioner's denial of social  
8 security benefits when the ALJ's findings are based on legal error or not supported by substantial  
9 evidence in the record as a whole. *Bayliss v. Barnhart*, 427 F.3d 1211, 1214 (9th Cir. 2005). As a  
10 general principle, an ALJ's error may be deemed harmless where it is "inconsequential to the  
11 ultimate nondisability determination." *Molina v. Astrue*, 674 F.3d 1104, 1115 (9th Cir. 2012)  
12 (cited sources omitted). The Court looks to "the record as a whole to determine whether the error  
13 alters the outcome of the case." *Id.*

14 "Substantial evidence" is more than a scintilla, less than a preponderance, and is such  
15 relevant evidence as a reasonable mind might accept as adequate to support a conclusion.  
16 *Richardson v. Perales*, 402 U.S. 389, 401 (1971); *Magallanes v. Bowen*, 881 F.2d 747, 750 (9th  
17 Cir. 1989). The ALJ is responsible for determining credibility, resolving conflicts in medical  
18 testimony, and resolving any other ambiguities that might exist. *Andrews v. Shalala*, 53 F.3d  
19 1035, 1039 (9th Cir. 1995). While the Court is required to examine the record as a whole, it may  
20 neither reweigh the evidence nor substitute its judgment for that of the Commissioner. *Thomas v.*  
21 *Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002). When the evidence is susceptible to more than one  
22 rational interpretation, it is the Commissioner's conclusion that must be upheld. *Id.*

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#### IV. DISCUSSION

As noted above, this case was previously remanded with instructions to reconsider four medical opinions. *See* AR at 848-61. Plaintiff now argues that on remand the ALJ reiterated the same reasons to discount the medical opinions that were previously found insufficient, and that any additional reasons provided were also insufficient. (Dkt. # 25 at 3-18.) The Court will address each the ALJ's assessment of each disputed medical opinion in turn.

##### A. Legal Standards<sup>4</sup>

Where not contradicted by another doctor, a treating or examining doctor's opinion may be rejected only for "clear and convincing" reasons. *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1996) (quoting *Baxter v. Sullivan*, 923 F.2d 1391, 1396 (9th Cir. 1991)). Where contradicted, a treating or examining doctor's opinion may not be rejected without "specific and legitimate reasons" supported by substantial evidence in the record for so doing." *Id.* at 830-31 (quoting *Murray v. Heckler*, 722 F.2d 499, 502 (9th Cir. 1983)).

##### B. Robert Jacobson, M.D.

Dr. Jacobson, Plaintiff's family doctor, wrote a letter in support of Plaintiff's disability application and completed a form opinion in August 2015, describing disabling mental and physical limitations. AR at 545-54. The ALJ gave little weight to Dr. Jacobson's opinion, finding it unsupported and inconsistent with the record. *Id.* at 777-78. Specifically, the ALJ found that Dr. Jacobson's opinion was based in part on conditions that the ALJ found not severe, and that to the extent he referenced neuropathy, the normal sensory and physical findings in Plaintiff's treatment record were inconsistent. *Id.* at 778. The ALJ also found Dr. Jacobson's opinion

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<sup>4</sup> Because the disability applications at issue here were filed before March 27, 2017, the regulations set forth in 20 C.F.R. § 404.1527 and § 416.927 apply to the ALJ's consideration of medical opinions.

1 regarding Plaintiff's memory loss to be inconsistent with objective memory testing in the record,  
2 and that the treatment notes documenting a focus on situational stressors contradicted Dr.  
3 Jacobson's findings regarding disabling limitations caused by depression or anxiety. *Id.* Next, the  
4 ALJ found that Dr. Jacobson's opinions relied in part on Plaintiff's self-report, which the ALJ  
5 found to be unreliable. *Id.* Lastly, the ALJ noted that to the extent that Dr. Jacobson opined that  
6 Plaintiff was unemployable or unable to work, such an opinion infringes on an issue reserved to  
7 the Commissioner. *Id.*

8 Plaintiff argues that none of these reasons is specific and legitimate, but the Court  
9 disagrees. The ALJ detailed the evidence regarding Plaintiff's allegations of neuropathy, finding  
10 that the objective evidence contradicted his allegations of disabling balance and mobility  
11 limitations (a finding not challenged by Plaintiff), and the ALJ referred to this evidence in  
12 finding Dr. Jacobson's limitations based on neuropathy to be inconsistent with the record. AR at  
13 773, 778. The ALJ did not err in finding the objective evidence of Plaintiff's normal sensory  
14 testing and other normal functioning to be inconsistent with Dr. Jacobson's opinion that  
15 Plaintiff's lack of sensation in his feet would cause disabling limitations. *See id.* at 545, 548-49.

16 Furthermore, the ALJ pointed to evidence of Plaintiff's memory testing (AR at 775, 778),  
17 that contradicts Dr. Jacobson's opinion that Plaintiff has significant and disabling memory loss  
18 (*id.* at 545, 552). Although Plaintiff argues that his memory issues fluctuated based on his degree  
19 of fatigue (dkt. # 25 at 16-17), he has not shown that the ALJ erred in finding that the objective  
20 memory testing (*e.g.*, AR at 472, 752) nonetheless failed to show disabling memory deficits and  
21 therefore reasonably contradicted Dr. Jacobson's opinion. Furthermore, even if Plaintiff was  
22 fatigued during the adjudicated period, the ALJ's decision identifies substantial evidence  
23 showing that Plaintiff retained normal cognition and was fully alert during appointments. *See id.*

1 at 774 (citing *id.* at 490, 503, 578, 589, 623-24, 626, 628, 630, 632, 644, 646, 648, 656, 665, 672,  
2 752, 1268, 1270, 1278, 1281, 1283, 1285, 1287, 1296, 1298, 1307, 1309, 1318, 1321), 778.

3 These inconsistencies between the medical record and Dr. Jacobson's opinion constitute  
4 specific, legitimate grounds to discount Dr. Jacobson's opinion, and Plaintiff has not shown that  
5 the ALJ erred in doing so. *See Tommasetti v. Astrue*, 533 F.3d 1035, 1041 (9th Cir. 2008) (not  
6 improper to reject an opinion presenting inconsistencies between the opinion and the medical  
7 record).

8 **C. David Jarvis, M.D.**

9 Dr. Jarvis examined Plaintiff in June 2014 and wrote a narrative report describing  
10 moderate mental limitations "increase[d]" to "severe" by Plaintiff's "recent cognitive difficulties,  
11 with agitation[.]" AR at 466-73. The ALJ gave partial weight to Dr. Jarvis's report, discounting  
12 his opinion that Plaintiff's limitations had become severe due to cognitive difficulties, with  
13 agitation, because these difficulties were not observed during Dr. Jarvis's examination and not  
14 documented in the overall record. *Id.* at 779.

15 The ALJ's reasoning is supported by substantial evidence. Dr. Jarvis himself noted that  
16 Plaintiff "doesn't do too badly on the cognitive testing today while relaxed but does poorly when  
17 he feels stressed." AR at 473. But, as noted by the ALJ, other cognitive testing was also largely  
18 normal. *See id.* at 752. Plaintiff has not pointed to evidence in the record documenting the  
19 existence of severe cognitive difficulties, with agitation, which was referenced by Dr. Jarvis, and  
20 thus has not shown that the ALJ erred in discounting this portion of Dr. Jarvis's opinion as  
21 unsupported and inconsistent with the record. *See Tommasetti*, 533 F.3d at 1041; *Thomas*, 278  
22 F.3d at 957 ("The ALJ need not accept the opinion of any physician, including a treating  
23 physician, if that opinion is brief, conclusory, and inadequately supported by clinical findings.").

1           **D.     Holly Petaja, Ph.D.**

2           Dr. Petaja examined Plaintiff in December 2014 and completed a DSHS opinion  
3 describing mostly moderate limitations and some marked limitations. AR at 537-44. The ALJ  
4 gave significant weight to the portion of Dr. Petaja's opinion indicating that Plaintiff could  
5 perform short, simple instructions, and that he had moderate limitations in other categories. *Id.* at  
6 778. The ALJ discounted the marked limitations identified by Dr. Petaja, finding that part of the  
7 opinion to be inconsistent with the many normal mental status examination findings in Dr.  
8 Petaja's report and the remainder of the record. *Id.* at 779. The ALJ acknowledged that some of  
9 Dr. Petaja's mental status examination findings were not entirely normal but found that the  
10 degree of limitation suggested in the clinical findings was not as severe as Dr. Petaja's  
11 conclusions indicated. *Id.*

12           The ALJ went on to find the marked limitations mentioned in Dr. Petaja's opinion to be  
13 inconsistent with Plaintiff's mental health treatment notes (which focused on managing  
14 Plaintiff's situational stressors such as his ex-wife's terminal illness, housing concerns, and his  
15 benefits application), as well as other normal findings in the record and Plaintiff's ability to not  
16 only manage his own self-care but also care for his ex-wife with cancer. AR at 779-80. The ALJ  
17 also noted that Dr. Petaja did not have the opportunity to review any records before rendering her  
18 opinion, and thus was not aware of any inconsistent evidence in other parts of the record. *Id.* at  
19 780.

20           Plaintiff contends that the ALJ's reasoning was found erroneous in a previous court  
21 remand order. Indeed, the previous court found that the ALJ erred in discounting Dr. Petaja's  
22 opinion because it was (1) undermined by her failure to review records and her status as a one-  
23 time examiner, (2) undermined by her reliance on Plaintiff's unreliable self-report, (3)

1 inconsistent with Plaintiff's minimal daily activities, and (4) unsupported by the overall record.  
2 AR at 856-59. Some of these erroneous reasons overlap with the ALJ's reasoning in the current  
3 decision, but the Court finds that in the current decision, the ALJ reasonably found Dr. Petaja's  
4 conclusions to be inconsistent with her clinical findings, and expanded upon the reasoning  
5 provided in the vacated ALJ decision. Unlike in the previous ALJ decision (*id.* at 24), this ALJ  
6 acknowledged both Dr. Petaja's normal *and* abnormal findings, and reasonably found that  
7 although Dr. Petaja noted some abnormalities, those abnormalities did not support the marked  
8 limitations she indicated. *Id.* at 779. The ALJ also identified specific evidence in the record that  
9 she found to be inconsistent with Dr. Petaja's opinion, which was not referenced in the ALJ's  
10 prior discounting of Dr. Petaja's opinion, such as mental health treatment notes documenting a  
11 focus on situational stressors, Plaintiff's intact social functioning, and many normal mental status  
12 examination findings. *Id.* at 779-80.

13         The Court finds that the ALJ reasonably weighed the evidence supporting Dr. Petaja's  
14 opinion, which is a function within the province of the ALJ. *See Bayliss*, 427 F.3d at 1216  
15 (rejecting physician's opinion due to discrepancy or contradiction between opinion and the  
16 physician's own notes or observations is "a permissible determination within the ALJ's  
17 province"). Because Plaintiff has not shown that his preferred interpretation of the evidence is  
18 the only reasonable interpretation (dkt. # 25 at 13-14), the Court finds that the ALJ provided a  
19 legally sufficient basis to discount Dr. Petaja's opinion.

20         **E.         Margaret Cunningham, Ph.D.**

21         In January 2014, Dr. Cunningham performed a psychological examination of Plaintiff  
22 and wrote a narrative report describing many marked or severe mental symptoms and limitations.  
23 AR at 525-36. The ALJ gave little weight to Dr. Cunningham's opinion, finding that Plaintiff's



1 presentation to Dr. Cunningham was not typical of his presentation on other occasions, and thus  
2 although Dr. Cunningham's opinion may be supported by her findings, those findings were not  
3 representative of Plaintiff's functioning throughout the adjudicated period. *Id.* at 779. Earlier in  
4 the decision, the ALJ had discussed Plaintiff's failure to accurately describe his alcohol use to  
5 Dr. Cunningham, as well as Plaintiff's disclosure that he had used cocaine the week before the  
6 examination. *Id.* at 776.

7         The ALJ also reiterated the same reasoning provided with respect to Dr. Petaja's opinion,  
8 finding Dr. Cunningham's opinion to be inconsistent with Plaintiff's mental health treatment  
9 notes (which focused on managing Plaintiff's situational stressors such as his ex-wife's terminal  
10 illness, housing concerns, and his benefits application), as well as other normal findings in the  
11 record and Plaintiff's ability to not only manage his own self-care but also care for his ex-wife  
12 with cancer. AR at 779-80. The ALJ also noted that Dr. Cunningham did not have the  
13 opportunity to review any records before rendering her opinion, and thus was not aware of any  
14 inconsistent evidence in other parts of the record. *Id.* at 780.

15         The Court finds that the ALJ did not err in discounting Dr. Cunningham's opinion in light  
16 of discrepancies between Plaintiff's presentation during her examination as compared with other  
17 appointments in the record. Dr. Cunningham noted that at the time of her examination, Plaintiff  
18 was newly separated from his wife, living in his truck, and using crack, and Dr. Cunningham  
19 entered mostly abnormal mental status examination findings. AR at 530. The ALJ identified  
20 other evidence in the record showing that when Plaintiff's situational stressors stabilized, his  
21 functional limitations were not disabling. *See id.* at 774-77. In light of this evidence, the ALJ did  
22 not err in finding that Plaintiff's presentation to Dr. Cunningham was not typical of his  
23 presentation throughout the adjudicated period. This reason was not provided in the prior ALJ

1 decision, and constitutes a specific, legitimate reason to discount Dr. Cunningham's opinion. *See*  
2 *Tommasetti*, 533 F.3d at 1041.

3 Because the Court finds that the ALJ provided at least one specific, legitimate reason  
4 identified herein to discount each of the disputed opinions, any error in other lines of reasoning is  
5 harmless. The Court therefore finds Plaintiff has not met his burden to show harmful legal error  
6 in the ALJ's assessment of the opinions of Drs. Jacobson, Jarvis, Petaja, and Cunningham.

7 **V. CONCLUSION**

8 For the foregoing reasons, the Commissioner's final decision is **AFFIRMED**, and this  
9 case is **DISMISSED** with prejudice.

10 Dated this 6<sup>th</sup> day of July, 2021.

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MICHELLE L. PETERSON  
14 United States Magistrate Judge  
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